

BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of) DISMISSAL AND CELA
MUR 6686) CASE CLOSURE UNDER
COMMITTEE TO ELECT) THE ENFORCEMENT
JUDGE BOB VANCE) PRIORITY SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System ("EPS"), the Commission uses formal scoring criteria to allocate its resources and decide which cases to pursue. These criteria include, but are not limited to, an assessment of the following factors: (1) the gravity of the alleged violation, both with respect to the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the legal complexity of issues raised in the case; (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"); and (5) development of the law with respect to certain subject matters. It is the Commission's policy that pursuing low-rated matters, compared to other higher-rated matters on the Enforcement docket, warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances, or, where the record indicates that no violation of the Act or underlying Commission regulations has occurred, to make a no reason to believe finding. The Office of General Counsel ("OGC") has scored MUR 6686 as a low-rated matter and has also determined that it should not be referred to the Alternative Dispute Resolution Office. For the reasons set forth below, OGC recommends that the Commission find no reason to believe, in part, and exercise its prosecutorial discretion to dismiss, in part, MUR 6686.¹

¹ EPS rating:

Complaint Filed: November 2, 2012. Response Filed: December 28, 2012.

1 Complainant Alabama Republican Party, in a letter by its Chairman Bill Armstrong,
2 alleges that the Committee to Elect Judge Bob Vance (the "Committee"),² a state candidate
3 committee registered in Alabama, became a federal committee pursuant to 2 U.S.C. § 431(4), (5)
4 and (6), when it made a \$2,000 campaign contribution to the 2008 Obama Victory Fund and,
5 thereafter, failed to register and report with the Commission. Compl. at 1.

6 Specifically, the Complainant states that on June 18, 2008, the Committee made a \$2,000
7 contribution to the Obama Victory Fund, one of President Obama's authorized committees
8 established to support both President Obama's 2008 election campaign and the Democratic
9 National Committee.³ Compl. at 1. The Complainant asserts because the contribution exceeded
10 \$1,000, the Committee was subsequently required under the Act to register and report as a
11 federal committee with the Federal Election Commission, which it failed to do. *Id.*

12 In response, the Committee argues that the Complainant states no facts that allege a
13 violation of the Act and, therefore, the Commission should dismiss the complaint. Resp. at 1.
14 The Committee neither acknowledges nor denies making a \$2,000 contribution to the Obama
15 Victory Fund in June 2008. *Id.* The Committee asserts, however, that it is not a political
16 committee under the Act because it lacks the requisite major purpose: the nomination or election
17 of federal candidates. *Id.* at 2-3. Specifically, the Committee states that it is the authorized
18 committee, under Alabama state law, of Judge Robert S. Vance, Jr., and that its "purpose was to

² The Committee to Elect Judge Bob Vance is the authorized campaign committee, under Alabama state law, of Judge Robert S. Vance, Jr., a circuit court judge in Jefferson County, Alabama.

³ The Complaint attached a copy of the Vance State Committee's Alabama Fair Campaign Practices Act Candidate/Elected Official Annual Report, in which the Committee reports having made a \$2,000 contribution to the Obama Victory Fund on June 18, 2008. Compl. at 6.

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1 support Mr. Vance's candidacy for state office."⁴ *Id.* at 1. The Committee observes that the
2 Supreme Court has construed the term "political committee" to encompass only organizations
3 whose *major purpose* is the nomination or election of federal candidates. *See Buckley v. Valeo*,
4 424 U.S. 1, 79 (1976); *Fed. Elec. Comm'n v. Mass. Citizens for Life, Inc. ("MCFL")*, 479 U.S.
5 238, 262 (1986). *Id.* at 2. Thus, the Committee contends that its major purpose is to support
6 Judge Vance's campaign for state office as reflected by its name, activities, and prescribed
7 functions under state law, and notes that the Complainant makes no allegation and provides no
8 evidence to suggest otherwise.⁵

9 The Act defines a "political committee" as any committee, association, or other group of
10 persons that receives "contributions" or makes "expenditures" for the purpose of influencing a
11 federal election, which aggregate in excess of \$1,000 during a calendar year. 2 U.S.C.
12 § 431(4)(A).⁶ In *Buckley v. Valeo*, 424 U.S. 1, 79 (1976), the Supreme Court concluded that the
13 term "political committee" "need only encompass organizations that are under the control of a
14 candidate or the major purpose of which is the nomination or election of a candidate." *See also*
15 Political Committee Status, 72 Fed. Reg. 5596, 5597-05 (Feb. 7, 2007) (announcing that the
16 Commission determines political committee status on a case-by-case basis by considering the
17 organization's "overall conduct," including its public mission statements and its proportion of
18 spending related to "federal campaign activity").

19
⁴ Judge Vance was the Democratic candidate for Chief Justice of the Alabama Supreme Court in the 2012 election cycle. The Committee was registered under the Alabama Fair Campaign Practices Act (codified at Section 17, Chapter 5 of the Alabama Code). Resp. at 1.

⁵ The Committee states that its purpose is evidenced by its name, activities, and its prescribed functions under state law. *See* Ala. Code 1975 § 17-5-7. Resp. at 2.

⁶ The terms "contribution" and "expenditure" include any gift, payment, distribution, advance, or deposit of money or anything of value "for the purpose of influencing any election for Federal office." 2 U.S.C. §§ 431(8)(A)(i), 431(9)(A)(i); 11 C.F.R. §§ 100.52, 100.111.

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1 Even accepting the Complaint's allegation that the Committee satisfied the statutory
2 threshold for political committee status, the Committee was not a political committee. The
3 Committee does not have the requisite major purpose of federal campaign activity, *i.e.*, the
4 nomination or election of federal candidates. *Id.* Rather, it "support[s] Judge Vance's campaign
5 for state office." Resp. at 2; *see also* Compl., Ex. A (reporting that Judge Vance seeks election
6 as Jefferson County Circuit Judge). This is shown through the Committee's disclosure reports,
7 filed pursuant to the Alabama Fair Campaign Practices Act. More specifically, in 2009, the
8 Committee made \$9,602.80 in expenditures. Compl., Ex. A. The June 18, 2008, \$2,000
9 contribution to the Obama Victory Fund appears to be the Committee's only federal activity in
10 2008.⁷ *Id.* This falls short of the required showing to meet the major purpose test.

11 Accordingly, this Office recommends the Commission find no reason to believe that the
12 Committee to Elect Judge Bob Vance violated 2 U.S.C. §§ 433 and 434 by failing to register as a
13 political committee and report its receipts and disbursements.

14 However, the Committee's state disclosure reports indicate that it may have received
15 corporate contributions. *See* Committee 2003 Annual Report & June 1, 2004, Primary Election
16 Report, <http://arc-sos.state.al.us/CGI/ELCCANDID.MBR/INPUT>. Under Alabama state law
17 corporations may make contributions to parties and candidates. Ala. Code § 10A-21-1.03.
18 Under the Act, it is unlawful for any corporation, national bank, or labor organization to make a
19 contribution or expenditure in connection with any election to any political office. 2 U.S.C.
20 § 441b. Based on the disclosure reports, it is possible that a portion of the Committee's funds
21 was not subject to the limitations and prohibitions of the Act. 2 U.S.C. § 441b, 11 C.F.R.

⁷ The Committee also reported contributions to the Committee to Elect Clyde Jones and the Committee to Elect Shanta Owens. Compl., Ex. A. Both of these committees are state committees in support of Alabama judicial candidates. *See* Government Records, Alabama Secretary of State, FCPA Candidate Campaign Committees, <http://arc-sos.state.al.us/CGI/ELCCANDID.MBR/INPUT>.

1 § 114.2. Accordingly, the Committee may have violated 2 U.S.C. § 441b by making a
2 contribution using prohibited funds to the Obama Victory Fund. Although a portion of the funds
3 raised by the Committee may not have been subject to the limitations and prohibitions of the Act,
4 the amount that the Committee contributed to the Obama Victory Fund was relatively small and,
5 therefore, this Office recommends the Commission dismiss this matter pursuant its prosecutorial
6 discretion under to *Heckler v. Chaney*, 470 U.S. 821 (1985), as to whether the Committee made a
7 prohibited contribution. This Office also recommends that the Committee receive a reminder
8 letter concerning the requirement that contributions made to federal candidates must satisfy the
9 funding and source limitations and prohibitions of the Act and Commission regulations.

10 **RECOMMENDATIONS**

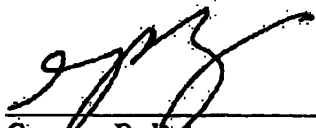
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- 12 1. Find no reason to believe that the Committee to Elect Judge Bob Vance violated 2
13 U.S.C. §§ 433 and 434 by failing to register as a political committee and report its
14 receipts and disbursements;
15
 - 16 2. Dismiss this matter pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985), as to
17 whether the Committee made a contribution using prohibited funds in violation of 2
18 U.S.C. § 441b and 11 C.F.R. § 114.2;
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 - 20 3. Remind the Committee to Elect Judge Bob Vance that political contributions to
21 federal candidates are subject to the funding source limitations and prohibitions of the
22 Act and Commission regulations;
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 - 24 4. Approve the attached Factual and Legal Analysis;
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 - 26 5. Close the file, and approve the appropriate letters.
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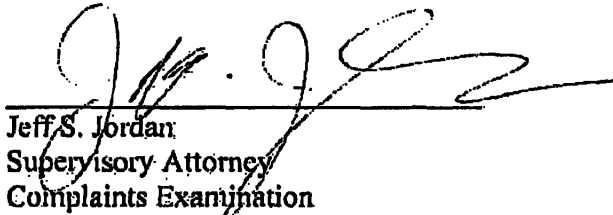
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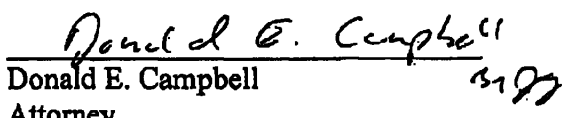
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